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## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 12 2009

DOCKETED BY

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MM

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
DIECA COMMUNICATIONS DBA COVAD  
COMMUNICATIONS COMPANY, ESCHOLON  
TELECOM OF ARIZONA, INC., MCLEODUSA  
TELECOMMUNICATIONS SERVICES, INC.,  
MOUNTAIN TELECOMMUNICATIONS, INC.,  
XO COMMUNICATIONS SERVICES, INC. AND  
QWEST CORPORATION'S REQUEST FOR  
COMMISSION PROCESS TO ADDRESS KEY  
UNE ISSUES ARISING FROM TRIENNIAL  
REVIEW REMAND ORDER, INCLUDING  
APPROVAL OF QWEST WIRE CENTER LISTS.

DOCKET NO. T-03632A-06-0091  
T-03267A-06-0091  
T-04302A-06-0091  
T-03406A-06-0091  
T-03432A-06-0091  
T-01051B-06-0091

DECISION NO. 70747

ORDER  
(Phase II)

Open Meeting  
February 3 and 4, 2009  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT****Procedural History**

1. On June 22, 2007, Qwest Corporation ("Qwest") filed an Application for Approval of  
2007 Additions to Non-Impaired Wire Center List ("2007 Additions Application").<sup>1</sup>
2. On June 29, 2007, Qwest filed the Publicly Available Data in Support of its 2007  
Additions Application.

<sup>1</sup> Qwest filed its 2007 Additions Application while the proceeding to approve the initial list of unimpaired wire centers  
was still being considered.

3. On June 17, 2008, Qwest filed an Application for Approval of 2008 Additions to Non-Impaired Wire Center List ("2008 Additions Application").

4. On June 26, 2008, Qwest filed Publicly Available Data in Support of its 2008 Additions Application.

5. The 2007 and 2008 Additions Applications are being considered together and comprise Phase II of this Docket. Phase I was the approval of the initial list of impaired wire centers.

6. On May 20, 2008, in Decision No. 70355, the Commission approved a Settlement Agreement between Qwest and DIECA Communications, Inc., doing business as Covad Communications Company and Mountain Telecommunications, Inc. ("Covad"); Eschelon Telecom of Arizona, Inc. ("Eschelon"); McLeodUSA Telecommunications Services, Inc. ("McLeod"); and XO Communications Services, Inc. ("XO") (collectively "Joint CLECs") ("Wire Center Settlement Order"). The Wire Center Settlement Agreement resolved issues between Qwest and the Joint CLECs concerning Qwest's initial list of unimpaired wire centers, and established procedures that would apply between the parties with respect to future Qwest filings to update the unimpaired wire center list. The Wire Center Settlement Order approved an initial list of Qwest unimpaired wire centers that applied to all carriers as well as the Joint CLECs, although non-signatory CLECs were not bound by the terms of the Wire Center Settlement Agreement.<sup>2</sup>

7. On September 12, 2008, 360network (USA) Inc. was granted intervention in this matter, and subsequently has been included among the Joint CLECs.

#### Background

8. On August 21, 2003, the Federal Communications Commission ("FCC") released its Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 ad 98-147 (effective October 2, 2003) ("TRO"); and on February 4, 2005, the FCC released the *Review of the Section 251*

<sup>2</sup> Decision No. 70355 at Findings of Fact Nos. 53 & 55.

1 *Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March  
2 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO").

3 9. In the *TRO*, the FCC established criteria for determining which unbundled network  
4 elements ("UNEs") had to be made available by Incumbent Local Exchange Carriers ("ILECs") to  
5 Competitive Local Exchange Carriers ("CLECs") under Section 251(c) of the Telecommunications  
6 Act of 1996 (the "1996 Act"). Pursuant to the *TRO*, an ILEC would have to make a network element  
7 available to the CLECs on an unbundled basis if the requesting carrier was impaired, such that lack of  
8 access to that network element would pose a barrier to entry.

9 10. In the *TRRO* the FCC, among other things, established the standards for determining  
10 impairment for high-capacity dedicated transport and loops. The standards hinge on the number of  
11 business lines and fiber-based collocators in the individual wire centers. Under the *TRRO*'s criteria,  
12 CLECs are deemed not to be impaired without access to DS1 transport on routes connecting a pair of  
13 wire centers where both wire centers contain at least four (4) fiber-based collocators or at least 38,000  
14 business access lines. Wire centers meeting these criteria are referred to as "Tier 1" wire centers.  
15 For DS3 transport and dark fiber transport, the *TRRO* established there is no impairment on routes  
16 connecting wire centers where both wire centers contain at least three fiber-based collocators or at  
17 least 24,000 business lines. Wire centers with three or more fiber-based collocators or 24,000 or  
18 more business lines are "Tier 2" wire centers. For DS1 loops, CLECs are not impaired in any  
19 building within the service area of a wire center containing 60,000 or more business lines and four or  
20 more fiber-based collocators; and for DS3 loops CLECs are not impaired within a wire center  
21 service area containing 38,000 or more business lines and four or more fiber-based collocators.

22 11. A wire center is the location of the ILEC local switching facility containing one or  
23 more Central Offices, and defines the area in which all customers serviced by a given wire center are  
24 located. When wire centers are designated as unimpaired for certain services, CLECs are no longer  
25 able to access those services at Total Element Long Run Incremental Cost ("TELRIC")<sup>3</sup> prices, and  
26 CLECs must transition to facilities of their own, to alternative services from another provider, or  
27

28 <sup>3</sup> TELRIC is a means to determine the price of a service based on the incremental cost of new equipment and labor, not counting the embedded cost of the old equipment or the labor to install the old equipment.

from the ILEC at tariff prices.

### **2007 and 2008 Additions Applications**

12. Following a Procedural Conference on June 30, 2008, a Procedural Order dated August 25, 2008, established procedures for the review of the 2007 and 2008 Additions Applications. The August 25, 2008, Procedural Order was mailed to all CLECs with current interconnection agreements with Qwest and provided notice to such CLECs of their opportunity to participate in the Docket. Because of the extensive list of such CLECs, those desiring to remain on the service list were directed to make an affirmative request to continue to receive filings. In addition, the August 25, 2008, Procedural Order adopted a Protective Order that would apply to Phase II of the proceeding as well as all future Phases of this docket. CLECs were given at least 30 days to review and execute the Protective Order and an additional 30 days to review data supporting Qwest's 2007 and 2008 Additions Applications and to file any objections to Qwest's designations.

13. In addition to the Joint CLECs, National Brands, Inc. dba Sharenet Communications Company requested to remain on the service list.

14. In its 2007 Additions Application, Qwest sought to add the following Arizona wire centers to the list of unimpaired wire centers:

<b><u>Wire Center</u></b>	<b><u>CLLI</u></b>	<b><u>TIER</u></b>	<b><u>Non-Impairment For</u></b>
Chandler Main	CHNDAZMA	Tier 2	DS3 Transport & DF
Chandler West	CHNDAZWE	Tier 2	DS3 Transport & DF
Phoenix Cactus	PHNXASCA	Tier 2	DS3 Transport & DF
Phoenix Greenway	PHNXASGR	Tier 2	DS3 Transport & DF
Phoenix Southeast	PHNXAZSE	Tier 1	DS1 & DS3 Transport & DF
Phoenix Sunnyslope	PHNXAZSY	Tier 2	DS3 Transport & DF
Phoenix West	PHNXAZWE	Tier 2	DS3 Transport & DF
Superstition West	SPRSAZWE	Tier 2	DS3 Transport & DF

15. In the 2008 Additions Application, Qwest sought to add the following Arizona wire centers to the list of unimpaired wire centers:

<u>Wire Center</u>	<u>CLLI</u>	<u>TIER</u>	<u>Non-Impairment For</u>
Gilbert	MESAAZG1	Tier 2	DS3 Transport & DF
Deer Valley North	DRVYAZNO	Tier 1	DS1 & DS3 Transport & DF
Phoenix Southeast	PHNXAZSE	Tier 1	DS1 & DS3 Transport & DF

16. On October 27, 2008, the Joint CLECs filed objections to approval of the following wire center designations:

2007 -- Superstition West (SPRSAZWE)

2008 -- Gilbert (MESAAZGI)

The Joint CLECs requested a procedural conference to determine procedures for resolving the disputed designations.

17. On November 12, 2008, the Commission's Utilities Division ("Staff") filed its Comments on Qwest's 2007 and 2008 Proposed Additions to Non-impaired Wire Center Designations. Staff found the methodology Qwest used for selecting the 2007 and 2008 non-impaired wire center designations to be in compliance with Section V of the Wire Center Settlement Agreement. Staff recommended convening a Procedural Conference to discuss a process for resolving the Joint CLEC objections.

18. On November 13, 2008, the Joint CLECs filed an amended Objection to Qwest's Proposed Additions. The Joint CLECs confirmed that based on information Qwest provided to them, they were withdrawing their objection to the Gilbert (MESAAZGI) wire center.

19. By Procedural Order dated November 19, 2008, a Procedural Conference was set to commence on December 11, 2008.

20. On December 10, 2008, the Joint CLECs filed a Withdrawal of Objection to Qwest's Proposed Additions to Non-Impaired Wire Center Designation, which withdrew the objection to the Superstition West wire center. With that filing, the Joint CLECs removed their only remaining objection to any of the wire centers included in Qwest's 2007 or 2008 Additions Applications. The Joint CLECs reserved their right to participate in this docket with respect to further issues or disputes, if any, raised by Staff or other CLECs, or the effective date of the proposed designations.

1       21.     Qwest, the Joint CLECs and Staff appeared through counsel at the December 11,  
2 2008, Procedural Conference. At that time, all parties, including Staff, confirmed that they had no  
3 objections to Qwest's designations as set forth in its 2007 or 2008 Additions Applications, and  
4 recommended that the Phase II designations be approved.

5       22.     Qwest provided data of business line counts, by type of circuit and by CLEC, and the  
6 inventory of fiber-based collocators, in support of the designations for each of the wire centers  
7 included in its 2007 and 2008 Additions Applications.

8       23.     No entity objected to the designations of non-impairment or tiers set forth in the 2007  
9 and 2008 Additions Applications. Qwest complied with the methodology for selecting non-impaired  
10 wire centers as set forth in Section V of the Wire Center Settlement Agreement. There is no evidence  
11 that the line counts or inventories of fiber-based providers provided by Qwest do not meet the criteria  
12 established in the *TRRO*.

13       24.     Qwest's 2007 and 2008 Additions Applications should be approved, and the wire  
14 center designations set forth therein added to the list of unimpaired wire centers.

15       25.     Qwest and the signing Joint CLECS agreed in the Wire Center Settlement Agreement  
16 that the effective date of uncontested wire center designations would be "thirty (30) days after the  
17 [date Qwest submits its non-impairment or tier designation filing, with supporting date] unless the  
18 Commission orders otherwise."<sup>4</sup> They further agreed that if there was an objection to Qwest's  
19 proposed non-impairment designation they would request that the Commission attempt to resolve the  
20 dispute within 60 days.<sup>5</sup> The terms of the Wire Center Settlement Agreement do not bind non-party  
21 CLECs. Under the circumstances, including the procedural history of these Additions Applications,  
22 and in the interest of ease of administration, it is reasonable that the effective date of the unimpaired  
23 designations in the 2007 and 2008 Additions Applications should be the effective date of this  
24 Decision.

25 ...

26 ...

27

28 <sup>4</sup> Wire Center Settlement Agreement at Section V.F.2 (Attached to Decision No. 70355 as Exhibit A).

<sup>5</sup> Wire Center Settlement Agreement at Section V.F.3.

**CONCLUSIONS OF LAW**

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

3. The Commission has jurisdiction over Qwest and the subject matter of the 2007 and 2008 Additions Applications.

4. Notice of the proceeding was provided in conformance with law.

5. Qwest's designations of non-impaired wire centers, as set forth in its 2007 and 2008 Additions Applications, meet the criteria for non-impairment as set forth in the *TRRO*, and the designated wire centers should be added to the list of unimpaired wire centers.

**ORDER**

IT IS THEREFORE ORDERED that the following wire centers shall be added to the list of non-impaired wire centers, with an effective designation date concurrent with the effective date of this Decision:

<b><u>Wire Center</u></b>	<b><u>CLLI</u></b>	<b><u>TIER</u></b>	<b><u>Non-Impairment For</u></b>
Chandler Main	CHNDAZMA	Tier 2	DS3 Transport & DF
Chandler West	CHNDAZWE	Tier 2	DS3 Transport & DF
Phoenix Cactus	PHNXASCA	Tier 2	DS3 Transport & DF
Phoenix Greenway	PHNXASGR	Tier 2	DS3 Transport & DF
Phoenix Southeast	PHNXAZSE	Tier 1	DS1 & DS3 Transport & DF
Phoenix Sunnyslope	PHNXAZSY	Tier 2	DS3 Transport & DF
Phoenix West	PHNXAZWE	Tier 2	DS3 Transport & DF
Superstition West	SPRSAZWE	Tier 2	DS3 Transport & DF
Gilbert	MESAAZG1	Tier 2	DS3 Transport & DF
Deer Valley North	DRVYAZNO	Tier 1	DS1 & DS3 Transport & DF
Phoenix Southeast	PHNXAZSE	Tier 1	DS1 & DS3 Transport & DF

IT IS FURTHER ORDERED that the procedures established in Decision No. 70355 concerning the filing of future phases in this docket shall continue to apply and that when Qwest Corporation makes future filings to update the unimpaired wire center list, it shall request a Procedural Conference, at which time the Commission will establish procedures to govern the next phase of the proceeding.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 6TH day of FEBRUARY 2009.

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT



SERVICE LIST FOR: DIECA COMMUNICATIONS DBA COVAD  
COMMUNICATIONS COMPANY, ESCHELON TELECOM OF  
ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC., MOUNTAIN TELECOMMUNICATIONS, INC.,  
XO COMMUNICATIONS SERVICES, INC. AND QWEST  
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